

Internal Revenue Service

Department of the Treasury

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CC:ITA:2 – COR-123155-01

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Dear [REDACTED]:

This responds to your letter dated April 16, 2001, concerning the deductibility of local transportation expenses. You asked for clarification on two points regarding Rev. Rul. 99-7, 1999-1 C.B. 361:

(1) Whether transportation expenses for out-of-town trips to temporary work locations are deductible without an overnight stay.

(2) Whether a 10-week job is considered a regular work location or a temporary work location.

We are happy to provide the following information. As provided in section 2.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 9, information letters are advisory only and have no binding effect on the Service.

Background

In general, transportation expenses incurred by a taxpayer in going between his or her residence and a work location are nondeductible commuting expenses. Rev. Rul. 99-7 provides three exceptions to this general rule:

Holding 1: A taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works.

Holding 2: If a taxpayer has one or more regular work locations away from the taxpayer's residence, the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location in the same trade or business, regardless of the distance.

Holding 3: If a taxpayer's residence is the taxpayer's principal place of business within the meaning of § 280A(c)(1)(A), the taxpayer may deduct daily transportation expenses incurred in going between the residence and another work location in the same trade or business, regardless of whether the other work location is regular or temporary and regardless of the distance.

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The following rules apply in determining whether a work location is temporary for purposes of Rev. Rul. 99-7:

If employment at a work location is realistically expected to last (and does in fact last) for 1 year or less, the employment is temporary in the absence of facts and circumstances indicating otherwise. If employment at a work location is realistically expected to last for more than 1 year or there is no realistic expectation that the employment will last for 1 year or less, the employment is not temporary, regardless of whether it actually exceeds 1 year. If employment at a work location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to exceed 1 year, that employment will be treated as temporary (in the absence of facts and circumstances indicating otherwise) until the date that the taxpayer's realistic expectation changes, and will be treated as not temporary after that date.

In a Chief Counsel Advice memorandum (No. 200026025, released on June 30, 2000), our office considered the proper application of the 1-year limitation when a taxpayer performs services at a location on a recurring, but infrequent or sporadic, basis for a period of more than one year. Noting that no general guidance on this issue had been issued, the memorandum stated:

For employers administering transportation expense reimbursements under an accountable plan, we believe that, if there is an initial realistic expectation that an employee will perform services at a work location for a period exceeding 1 year, but for no more than 35 workdays (or partial workdays) during each of the calendar years within that period, then employment at that location may be treated as temporary (rather than nontemporary) for a calendar year in which the employee actually works no more than 35 workdays (or partial workdays) at that location.

Discussion

(1) Whether transportation expenses for out-of-town trips to temporary work locations are deductible without an overnight stay.

As stated in Holding 1 of Rev. Rul. 99-7, a taxpayer may deduct the expenses of going between the residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works. See Aldea v. Commissioner, T.C.M. 2000-136. The "overnight" rule comes into play when the taxpayer claims a deduction for "away from home" travel expenses under §162(a)(2) of the Internal Revenue Code. See Rev. Rul. 93-86, 1993-2 C.B. 71.

(2) Whether a 10-week job is considered a regular work location or a temporary work location.

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A fellow practitioner had posited the scenario of a construction worker who works at a series of short-term jobs ranging from 3 weeks to 10 weeks. The construction worker's trips are not described in Holding 1, because all the jobs are in the same commuting area. The practitioner, though, has concluded (based on Chief Counsel Advice memorandum No. 200026025) that any job exceeding 35 days is a regular work location, and therefore Holding 2 of Rev. Rul. 99-7 would allow deductions between the worker's residence and worksites of 35 or fewer days. You disagree with his conclusion.

It appears your colleague has misapplied the reasoning in the Chief Counsel Advice memorandum. The 35-day interpretation therein involved work by a taxpayer at a location on an infrequent or sporadic basis for a period that exceeds a year. The hypothetical worker described above does not work at this type of job, but rather works at a series of jobs each of which lasts for a few weeks. Rev. Rul. 99-7 clearly states that if employment at a work location is realistically expected to last (and does in fact last) for 1 year or less, the employment is temporary in the absence of facts and circumstances indicating otherwise. Accordingly, this worker is merely commuting when going between the residence and these work locations.

I hope this information is helpful. Please call Edwin B. Cleverdon, Identification Number 50-01366, at (202) 622-4920, if you have any questions.

Sincerely,

Associate Chief Counsel
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By: _____
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